

REQUEST FOR PROPOSALS

PUBLIC OUTREACH

For

THE I-680 SMART CARPOOL LANE PROJECT

By the

Alameda County Congestion Management Agency

RESPONSES DUE:

3:00 PM, Thursday, August 4, 2005

Alameda County Congestion Management Agency
1333 Broadway, Suite 220,
Oakland, CA 94612

Request for Proposals (RFP A05-012)

Public Outreach

for

the I-680 Smart Carpool Lane Project

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SECTION 1: INTRODUCTION AND OVERVIEW

The ACCMA serves as the Congestion Management Agency for Alameda County responsible for planning and programming State and Federal funding for transportation projects within the county. The ACCMA completed a feasibility study for the implementation of High Occupancy Toll (HOT) Lanes in the Sunol Corridor. The study concluded that such lanes are feasible, so the team of the ACCMA, the Alameda County Transportation Improvement Authority (ACTIA) and Caltrans is proceeding with the development of this project. The project is considered a pilot project intended to demonstrate the value of HOT lanes in the Bay Area established in a modified HOV lane.

The project will convert the existing southbound HOV Lane over Sunol Grade into a High Occupancy Toll lane by implementing an Electronic Toll System (ETS) in the lane as Caltrans widens the overall facility to standard widths. Caltrans is currently environmentally clearing and designing the widened facility. Caltrans and the ACCMA through its consultant, URS, are currently in the process of preparing the Environmental Document and design for the Smart Lane roadway work to be included with the Caltrans widening contract. The ACCMA through its contract with Wilbur Smith and Associates is simultaneously developing the design of the ETS.

The Lane will be operated by the Sunol Smart Carpool Lane Joint Powers Authority as directed by AB 2032, signed by the Governor September 9, 2004. The ACCMA, serving as the administering agency is managing the project to establish the facility.

This project will be funded by a combination of ACTIA sales tax measure funds and Federal funds.

In order to operate the Smart Carpool Lane, there are two primary components to be built:

- a.) an HOV lane constructed for Toll Operation (Smart Lane roadway work), and
- b.) an Electronic Toll System (hardware and software).

a.) Smart Carpool Lane Roadway Work

The Smart Carpool Lane roadway work to be include in the Caltrans HOV lane widening contract includes:

- Electrical work,
- Poles and controller cabinets,
- Traffic monitoring stations,

- Enforcement equipment and areas,
- Changeable message signs,
- Barrier-mounted signs, and
- Striping.

The complete Smart Lane facility (highway improvements and ETS) must be environmentally cleared apart from the Caltrans HOV lane environmental document. The scoping and environmental clearance work is being done by URS, assisted by the Wilbur Smith and Associates.

The current schedule for environmental clearance and the design is shown in the table below.

Smart Elements Milestones	Date
Environmental Clearance	11/05
Draft Plans (35% Design)	11/05
Unchecked Plans and estimate (65% Design)	4/06
Final Plans, Specifications and Estimate	8/06
Advertise contract	2/07
Begin construction	7/07
Complete construction	11/09

b.) Smart Carpool Lane Electronic Toll System

There are options for how to design, develop, implement, operate and maintain the ETS, which must be analyzed so that an approved plan for development and implementation can be documented. The ETS must be compatible with the Bay Area's FASTRAK system, so that a patron can use any toll facility within the State.

The ETS development work includes, but is not limited to:

- a documented operations and maintenance strategy,
- the toll equipment design and selection,
- the enforcement strategy and the required equipment,
- the configuration of the equipment on the road,
- the data communication system selection,
- the back office hardware to operate the Smart Lane and to collect the tolls,
- the software to operate the Smart Lane and to collect the tolls,

- the necessary changes to the Bay Area Toll Authority's (BATA's) Service Center software, and
- an operations center.

SECTION 2: SERVICES TO BE PROVIDED

The ACCMA intends to retain a qualified professional public outreach/relations firm/team to be part of the ACCMA/ACTIA/Caltrans Project Delivery Team (PDT). The consultant will serve as the Public Outreach Manager for the Smart Carpool Lane Project, providing a written Public Outreach Plan, Stakeholder Task Force support, and focus groups services.

All products shall be acceptable to the ACCMA, Caltrans and the Federal Highway Administration (FHWA), therefore the Public Outreach Plan and its execution must be concurred with by the key stakeholder agencies and approved by the Sunol Smart Carpool Lane Joint Powers Authority.

For the consultant work effort, the consultant shall be familiar with and responsible for providing and performing the following tasks and activities. Additional tasks may be added as the ACCMA determines necessary.

Task 1: Public Outreach Plan

The consultant will work with both the Project Team and the Management Steering Committee to develop an appropriate Public Outreach Plan. Final plan approval rests with the Policy Advisory Committee/Joint Powers Board. The Plan will incorporate, but is not necessarily limited to the following tasks.

Deliverables:

- Draft Public Outreach Plan
- Comment log, indicating changes to the Plan
- Final Public Outreach Plan

Task 2: Conduct Public Meeting in I-680 Corridor

The consultant will prepare all materials, complete all logistics associated with the public outreach meeting, facilitate the meeting, document comments at the meeting and prepare a written report documenting the comments and responses to comments. The work for this task will begin upon issuance of the Notice to Proceed in order to conduct the meeting no later than September.

The work on this task will include, but is not limited to:

- Confirm Alameda County jurisdictions affected by the project
- Develop mailing lists and identify other appropriate notification opportunities

- Prepare materials for meetings
- Identify and implement a method for notifying corridor travelers outside of Alameda County
- Identify and implement a method for responding to comments
- Report results and recommendations to the Policy Advisory Committee/JPB

Deliverables:

- Mailing list
- Draft announcement
- Final announcement
- Meeting location
- Facilitate the meeting
- Written Report documenting the comments and response to comments from the meeting

Task 3: Stakeholder Task Force

The Stakeholder Task Force will provide input on specific issues including but not limited to the design, tolling and usage policies of the Smart Carpool Lane and provide project advocacy as appropriate. Stakeholders could include representatives from the following: local jurisdictions, transit agencies, business, environmental organizations, transit riders, carpoolers in the corridor, and single occupant drivers. This is not an exhaustive list, others may be added as appropriate.

The consultant will assist the Project Manager in forming and meeting with this task force. The work on this task will include, but is not limited to:

- Identify participants for the Stakeholder Task Force to provide feedback on design and operational issues during the design and pre-implementation of the project
- Interview with stakeholders and develop other methods as appropriate to elicit input from stakeholders
- Support the Quarterly Task Force Meetings, including the documentation of input on design, tolling, and usage policies
- Provide input on and concur with the issues to cover in the Focus Group Sessions

Deliverables:

- Stakeholder Task Force member roster
- Conduct interviews
- Preparation and distribution of Task Force Meeting documents

- Meeting arrangements

Task 4: Focus Groups

Following the Public Meetings and the formation of the Stakeholder Task Force, the need for clarification of various issues is anticipated. Focus Groups will be used to test concepts and better define the concerns of the motoring public. This work will provide early public opinion on specific issues effecting the development of the Electronic Toll System, including but not limited to the appearance, tolling and usage policies of the Smart Carpool Lane.

The work on this task will include, but is not limited to:

- *Plan and conduct the Sessions*
- *Provide a report of the results*

Deliverables:

- Focus Group Meetings
- Draft Report of findings from Focus Group Meetings
- Final Report of findings from Focus Group Meetings

SECTION 3: I-680 SUNOL CORRIDOR AND PROJECT DESCRIPTION

The I-680 corridor is a primary north-south transportation corridor between Alameda and Santa Clara counties, which serves commuter, commercial and recreational traffic. The I-680 corridor from I-580 in Alameda County to Route 237 in Santa Clara County was widened from a four-lane to a six-lane freeway through a series of projects between 1991 and 1994. The length of this corridor segment is approximately 38 kilometers (24 miles). A recession in the early 1990's coupled with the completion of the widening projects, led to improvements in the level of service within this corridor segment. However, the improvement in traffic flow was temporary.

Beginning in 1994, traffic volume over the Sunol Grade segment of I-680 began increasing steadily. In the spring of 1995, Caltrans reported that southbound I-680 in Alameda County was the second most congested corridor in the Bay Area during the morning peak commute. The corridor was ranked as 28th just the previous year. While traffic volumes increased dramatically due to strong job growth in Silicon Valley and the surrounding South Bay, affordable housing within the immediate area was limited. The nearest available affordable housing was in the Tri-Valley (Dublin, Livermore, Pleasanton), East Contra Costa County, and the San Joaquin Valley areas. Consequently, I-680 became the commuting route of choice for commuters since few other options were available. In future years, if employment growth remains strong in Silicon Valley and the surrounding South Bay, travel demand, in general, will increase and compound existing traffic congestion in this corridor.

Recognizing that this increased congestion would impact the economic well being of the South Bay, the AACMA, the Santa Clara Transportation Authority (SCVTA), the Contra Costa Transportation Authority (CCTA), MTC, and Caltrans combined Regional Improvement Program (RIP) and Interregional Transportation Improvement Program (ITIP) funds for a southbound I-680 HOV project. The same agencies worked together to provide input on funding, scheduling, and resources for the I-680 Sunol Grade Northbound Project. As a result of these efforts, the northbound project has been included in the Governor's Traffic Congestion Relief Plan (TCRP) and funding is included in the ITIP.

As part of the environmental clearance effort for the Southbound HOV Project, an agreement was reached between the stakeholders to conduct a feasibility study of High Occupancy Toll lanes through this corridor. That study concluded that such lanes would improve operation of the corridor and generate revenue for future improvements within the corridor. This project is intended to demonstrate the validity of the study findings by implementing a HOT facility on what will be a modified Bay Area HOV lane. The Southbound Ultimate HOV project will environmentally clear and construct sufficient pavement for the operation of an HOT lane in the southbound direction only. This project will convert that HOV facility into a HOT facility.

SECTION 4: DBE REQUIREMENTS

The CMA has an adopted DBE Program that is intended to encourage participation of disadvantaged business enterprises. Consistent with this program, the CMA has established a DBE participation goal of 0% for the services for public outreach for the I-680 Smart Carpool Lane Public Outreach. Although the zero goal has been identified, the CMA encourages DBE participation.

SECTION 5: RFP SUBMITTAL REQUIREMENTS

Please prepare your proposal in accordance with the following requirements.

1. *Proposal:* The proposal (excluding resumes and the transmittal letter) shall not exceed a total of the equivalent of 25 single-sided, 8.5" x 11" pages. Resumes should be included in an appendix.
2. *Transmittal Letter:* The proposal shall be transmitted with a cover letter describing the firm's/team's interest and commitment to the proposed project. The letter shall state that the proposal shall be valid for a 90-day period and that staff proposed are available to begin work on this contract upon approval by the ACCMA Board. The person authorized by the firm/team to negotiate a contract with ACCMA shall sign the cover letter and the letter should include the name, title, address and telephone number of the individual to whom correspondence and other contacts should be directed during the consultant selection process.

Address the cover letter as follows:

Jean Hart, Deputy Director
Alameda County Congestion Management Agency
1333 Broadway, Suite 220
Oakland, California 94612

3. *Project Understanding:* This section should clearly convey the consultant's understanding of the nature of the work and the general approach to be taken.
4. *Work Plan and Schedule.* This section should include a description of how each task of the project will be conducted, identification of deliverables, and a schedule. The Work Plan should have sufficient detail to demonstrate a clear understanding of the project. The schedule should show the expected sequence of tasks and important milestones.
5. *Management Approach and Staffing Plan.* This section should describe the consultant's approach to management of the work. If the proposal is a team effort, the distribution of work among the team members should be indicated. This section should discuss the consultant's organization for this project, how the work assignments are structured, and the staffing. A chart showing the amount of time each key team member is devoting to the project should be included. The consultant shall describe the role of any subcontractors, with a description of the subcontractors' specific responsibilities. Discuss the firm/team's

approach for completing the services for this project within budget.

The proposal should include a staffing plan (by quarter) and an estimate of the **total hours** (detailed by position). The staffing plan should also identify the hours required to complete each of the tasks listed in Section 2 above and the total hours for the overall project.

6. *Qualifications of the Firm.* This section should provide a description of previous projects, which clearly demonstrate the consultant's experience and qualifications to perform the marketing and public outreach work for a toll facility. These descriptions should identify the role, if any, of key personnel assigned to conduct the project, and the outcome of the project. Provide a list of up to three former clients for whom consultant's firm and team members have performed services similar to those described in this RFP, along with names and telephone numbers of persons who may be contacted as references. If subcontractors are to be used, provide similar information for each subcontractor.

Key personnel are expected to be committed for the duration of the project. Replacement of key personnel will not be permitted without prior consultation with and approval of the ACCMA.

7. *Submittal of Proposals:* Ten (10) copies of your proposal are due at the ACCMA offices no later than the time and date specified in Section 7 below. Envelopes or packages containing the proposals should be clearly marked, **"Proposals Enclosed."**
8. *Cost Proposal:* A cost proposal should be submitted in a **separate sealed envelope titled "Smart Carpool Lane Public Outreach Cost Proposal."** The cost submittal should indicate the number of anticipated hours by the Project Manager and key personnel. The estimated level of hours for other staff can be summarized in general categories.

SECTION 6: SELECTION OF CONSULTANT

The overall process will evaluate the technical components of all the proposals completely and independently from the cost component. The proposals will be evaluated and scored on a 100 point total basis using the following criteria:

1. Qualifications and specific experience of Key Personnel.
2. Project understanding and approach, including an understanding of the ACCMA and coordination processes.
3. Experience with similar types of projects.
4. Satisfaction of previous clients.
5. Schedule and capacity to provide qualified personnel.

Two or more of the firms/teams may be invited to an interview on the date specified in Section 7 below. The Project Manager and Key Personnel should attend the interview. The evaluation / interview panel may include representatives from ACCMA, Caltrans, ACTIA and other agencies, but the specific composition of the panel will not be revealed prior to the interviews. Costs for travel expenses and proposal preparation shall be borne by the consultants.

Once the top firm/team has been determined, ACCMA staff will start contract negotiations with firm/team. If contract negotiations are not successful, the second ranked firm/team may be asked to negotiate a contract with ACCMA, etc. Provided the negotiations are proceeding well, the ACCMA may elect to initiate a portion of the work scope with a Notice to Proceed (NTP), prior to execution of the contract.

The selection of and execution of the contract with the successful consultant will be made pending ACCMA Board approval, which is planned for the July 28, 2005 meeting.

SECTION 7: SELECTION PROCESS DATES

- | | |
|--------------------------------|--|
| July 18, 2005: | A Pre-proposal Meeting will be held at 10:00 a.m. at the ACCMA offices |
| August 4, 2005: | Proposals are due no later than 3:00 p.m. on August 4, 2005 at the offices of the Alameda County Congestion Management Agency, 1333 Broadway, Suite 220, Oakland, CA 94612. <i>Late submittals will not be accepted.</i> |
| Week of August 8, 2005: | Interviews for consultant selection will be held the week of August 8, 2005. |

If you have any questions regarding this RFP, please contact:

Jean Hart
Deputy Director, ACCMA
Phone (510) 836-2560
Fax (510) 836-2185
jhart@accma.ca.gov

SECTION 8: GENERAL CONDITIONS

A. Limitations

This RFP does not commit the Alameda County CMA to award a contract or to pay any costs incurred in the preparation of a proposal in response to this RFP.

B. Rejection of Proposals

The Alameda County CMA reserves the right to reject any or all proposals.

C. Award

All finalists may be required to participate in negotiations and to submit such price; technical or other revisions of their proposals as may result from negotiations. Accordingly, each initial proposal should be submitted on the most favorable terms from a price and technical viewpoint.

D. Workscope Modifications

The ACCMA reserves the right to request changes to the staffing and/or scope of services contained in any of the proposals and to enter negotiations with any of the proposers regarding their submittal.

E. Contract

A sample contract is shown in Attachment 2. It is expected that the terms of the contract will be acceptable to the consultant.

F. Non - Discrimination

Contractors shall not discriminate on the basis of race, color, national origin, sex, or physical disability in the performance of CMA contracts

G. Levine Act

Selected consultants will be required to disclose on the record any contribution of more than \$250.00 which they have made to a CMA Board member within the twelve-month period preceding the submittal deadline of this RFP. This applies to your company, any member of your team, any agents for you or other team members and to the major shareholders of any closed corporation, which is part of your team. If you have made a contribution which needs to be

disclosed you must provide written notice of the date, amount and receipt of the contribution(s) to the CMA Executive Director, Dennis Fay. This information will need to be provided before the CMA can approve any contract

SECTION 9: LISTS OF FIRMS THAT RECEIVED THIS RFP

See Attachment 3 for the list of firms that received this RFP.

Attachments:

- Attachment 1 – ACCMA Sample Contract
- Attachment 2 – List of firms that received notification of this RFP

**Agreement
between the**

ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY

and

Comment [NP1]: Note! This document contains numerous automatic cross-references. Please consult WP for assistance in utilizing this Word feature.

Comment [NP2]: Note! Please use the SMALL CAPS format for defined terms such as CONSULTANT, PROJECT and AGREEMENT.

This AGREEMENT is made and entered into as of the latest date appearing on the signature page below, by and between the ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY, a joint powers agency ("CMA") and _____ /a _____ (state) _____ corporation/ /a _____ (state) _____ partnership/ /a _____ (state) _____ limited liability company/ /a sole proprietorship/, with a place of business at _____, _____ (City) _____, CA ("CONSULTANT").

RECITALS

WHEREAS, CMA has defined and developed the _____

_____ /describe
project/ ("PROJECT");

WHEREAS, CMA desires to secure *[professional services / describe]* necessary for said PROJECT; and

WHEREAS, CONSULTANT represents that it possesses the professional qualifications and expertise to provide such services;

NOW, THEREFORE, it is mutually agreed by and between the parties as follows:

CMA hereby contracts with CONSULTANT and CONSULTANT hereby accepts such contract to perform the services upon the terms and subject to the conditions and in consideration of the payments set forth in this AGREEMENT. CONSULTANT promises, covenants and agrees to diligently pursue the work to completion in accordance with the schedule and under the terms and conditions set forth herein.

ARTICLE I

A. GENERAL.

1. **The PROJECT.** The PROJECT which is the subject of this AGREEMENT is more particularly described in **Appendix A**, "Detailed Scope of Work," attached hereto and by this reference incorporated herein.

2. **Scope of Services.** Except as may be specified elsewhere in the AGREEMENT, CONSULTANT shall furnish all technical and professional services including labor, material, equipment, transportation, supervision and expertise to perform all operations necessary and required to satisfactorily complete the work in **Appendix A**, as further defined in **Appendix D**, "Project Cost Proposal," attached hereto and by this reference incorporated herein.

3. **Term.** The term of the AGREEMENT shall be from the date of Notice to Proceed with the services until the completion of the PROJECT pursuant to the Schedule of Work, to the satisfaction of CMA as evidenced by the Notice of Final Acceptance unless terminated earlier pursuant to **Article I, Section B**, below.

4. **Compensation.**

a. Compensation by CMA to CONSULTANT will be on the cost basis set forth in **Appendix D**.

b. Total compensation for services to be performed under this AGREEMENT will not exceed \$ _____, including Direct Expenses but excluding taxes, and CONSULTANT shall not be obligated to perform additional services beyond the scope of this AGREEMENT or incur costs which would cause this amount to be exceeded, unless and until the AGREEMENT has been formally amended in writing.

c. The aggregate amount was computed based on **Appendices A and D**.

5. **CMA's Representative.** CMA hereby designates its Executive Director to be its representative in administering all matters relative to the AGREEMENT. CMA's Representative may delegate authority for specific matters to other staff members or other consultants.

6. **CONSULTANT's Representative.** CONSULTANT hereby designates _____ to represent CONSULTANT with full authority under the AGREEMENT.

7. CONSULTANT's Identity and Personnel. _____ will be the key person for the performance of services under this AGREEMENT.

CONSULTANT is the prime consultant heading a team that includes multiple subconsultant firms. The identity of the firms, their respective areas of responsibility and the key personnel who will work on the PROJECT are identified on **Appendix B**, "Key Project Personnel," attached hereto and by this reference incorporated herein. Any significant change in responsibilities among such firms, any addition or deletion of a firm (whether working as a joint venture partner or subconsultant), and any change in key personnel may be made only upon prior written approval by CMA.

CONSULTANT and its subconsultants shall notify CMA of any proposed change of ownership or fundamental structure, respectively, in CONSULTANT's firm or any subconsultants' firm. Within 30 days of such notice, CMA shall notify CONSULTANT whether CMA will approve such changed firm to continue providing services under this AGREEMENT or whether CMA will terminate this AGREEMENT or require a substitution of a subconsultant firm. Nothing in this provision shall be construed to limit CMA's right to terminate this AGREEMENT for cause or without cause as set forth in **Article I, Section B** of this AGREEMENT.

Subcontracts between CONSULTANT and other team member firms and between team member firms and other lower tier subconsultants will be subject to review and approval of CMA's representative.

8. Preliminary Review of Work. Where CONSULTANT is required to prepare and submit reports, working papers, etc. to CMA as products of the work described in the Scope of Work, these shall be submitted in draft form, and CMA shall have the opportunity to direct revisions prior to formal submission by CONSULTANT.

9. Appearance at Hearings. If and when required by CMA, CONSULTANT shall render assistance at public meetings and hearings to perform its services under the AGREEMENT as may be deemed necessary by CMA.

10. Responsibility of CONSULTANT. CONSULTANT shall be responsible for the professional quality, technical accuracy and the coordination of the services furnished by it under the AGREEMENT. Neither CMA's review, acceptance, nor payment for any of the services

required under the AGREEMENT shall be construed to operate as a waiver of any rights under the AGREEMENT or of any cause of action arising out of the performance of the AGREEMENT, and CONSULTANT shall be and remain liable to CMA in accordance with applicable law for all damages to CMA caused by CONSULTANT's negligent performance of any of the services furnished under the AGREEMENT.

11. Inspection of Work. It is understood that authorized representatives of CMA may inspect or review CONSULTANT's work in progress at any reasonable time.

12. Suspension, Delay or Interruption of Work. CMA may suspend, delay, or interrupt the services of CONSULTANT for the convenience of CMA. In the event of such suspension, delay, or interruption by CMA or of Excusable Delays as defined in **Article II, Section C**, equitable adjustment will be made in the PROJECT schedule, commitment and cost of CONSULTANT's personnel and subconsultants, and CONSULTANT's compensation.

13. No Third Party Beneficiaries. This AGREEMENT gives no rights or benefits to anyone other than CMA and CONSULTANT and has no third-party beneficiaries.

14. Legal Action. All legal actions by either party against the other arising from this AGREEMENT, or for the failure to perform in accordance with the applicable standard of care, or any other cause of action, will be subject to the statutes of limitation of the State of California.

15. Survival of Indemnities. Notwithstanding the termination of this AGREEMENT and/or the breach of contract or warranty, fault, tort (including but not limited to torts based on negligence, statute or strict liability), CONSULTANT's obligations of indemnity set forth in **Article I, Section F** and any releases, limitations on indemnity, and any and all limitations on any remedies herein shall survive termination of this AGREEMENT for any cause, and **Article I, Section A, paragraph 10** and **Article I, Section F** of this AGREEMENT shall take precedence over any conflicting provision of this AGREEMENT or any document incorporated into it or referenced by it.

16. Jurisdiction. The laws of the State of California will govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it.

17. Severability and Survival. If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such

invalidity, illegality, or unenforceability will not affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

18. Arbitration. All claims, counterclaims, disputes, and other matters in question arising out of, or relating to, this AGREEMENT or the breach thereof shall be resolved by final, binding arbitration, conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect at the date of execution of this AGREEMENT, except that the parties may mutually agree to a different alternative dispute resolution mechanism by jointly executing an agreement in writing describing such alternative mechanism. Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. If either party refuses or fails to participate in naming an arbitrator or in the arbitration itself, the arbitrator named by the American Arbitration Association or the other party is hereby authorized to decide the dispute based upon the information presented to him/her. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding hereunder. In any arbitration proceeding hereunder, any arbitrator shall have substantial training and professional experience in the subject matter of the arbitration, but shall not have been employed by a party for at least five (5) years prior to the arbitration proceeding. No person shall be chosen as an arbitrator who has at any time been an employee or consultant of either party. All arbitration hearings shall be held at a mutually agreeable time and location within the City of Oakland, California, unless otherwise agreed by the parties. The decision of the arbitrator shall be final, conclusive and binding on the parties, absent fraud or gross error. The decision of the arbitrator may be entered as a judgment in a court of competent jurisdiction. The parties shall each be responsible for one-half of the arbitrator's fees and expenses. Any attorney-client privilege and other protections against disclosure of confidential information, including any protection afforded by the work product privilege for attorneys that could otherwise be claimed by a party shall be available to and may be claimed by such party in any arbitration proceeding hereunder. Neither party waives any attorney-client privilege or any other privilege against disclosure of confidential information by reason of anything contained in or done pursuant to or in connection with this **paragraph 18**. All arbitration proceedings hereunder may be reported by a certified shorthand court reporter.

19. Attorneys' Fees. Should it become necessary to enforce the terms of this AGREEMENT, the prevailing party as determined by a court or an arbitrator shall be entitled to recover reasonable expenses and attorneys' fees from the other party.

20. Final Acceptance. When CMA determines in its reasonable discretion that CONSULTANT has satisfactorily completed the Scope of Services, CMA shall give CONSULTANT written Notice of Final Acceptance, and CONSULTANT shall not incur any further costs hereunder. CONSULTANT may request this determination when, in its opinion, it has satisfactorily completed the Scope of Services, and if so requested, CMA shall make this determination within three weeks of such request.

21.

22. Subcontracts. Subcontracts between CONSULTANT and other team firms and between team members firm and other lower tier subconsultants will be subject to review and approval of CMA's representative. Any such subcontracts in excess of \$25,000.00 shall contain all provisions stipulated in this AGREEMENT as applicable to subconsultants.

23. The services described in the Schedule of Work shall be completed on or before _____, unless such date is extended by mutual agreement of the parties.

B. TERMINATION/CANCELLATION.

1. For Convenience. CMA may terminate this AGREEMENT. If CMA terminates the AGREEMENT for the convenience of CMA, CMA shall give CONSULTANT seven (7) days prior written notice. CONSULTANT shall be paid for services performed to the date of termination, to include a pro-rated amount of profits, if applicable, but no amount shall be allowed for anticipated profit on unperformed services. In addition to payment for services performed, CMA shall pay CONSULTANT the allowable costs incurred prior to termination, and other costs reasonably incurred by CONSULTANT to implement the termination, such as, but not limited to, subcontract termination costs and related closeout costs, if any.

2. For Cause. If CONSULTANT fails to fulfill its obligations under this AGREEMENT and CMA decides to terminate this AGREEMENT accordingly, CMA shall give CONSULTANT seven (7) days prior written notice of its intent to terminate the AGREEMENT for cause. If, at the

end of the seven (7) day notice, CONSULTANT has not commenced correction of its performance, CMA may immediately thereafter exercise its right of termination.

3. Damages/Compensation. If the termination is due to the failure of CONSULTANT to fulfill its obligations under the AGREEMENT, CONSULTANT will be compensated for that portion of the work which has been completed and accepted by CMA, and for services performed to the date of termination, including a prorated amount of profit, if applicable, but no allowance for anticipated profit on unperformed services. In such case, CMA may take over the work and prosecute the same to completion by contract or otherwise, and CONSULTANT shall be liable to CMA for reasonable costs incurred by CMA in making necessary arrangements for completion of the work by others.

4. Adjustments. If, after notice of termination for failure to perform, it is determined by CMA that CONSULTANT had not so failed and CMA nonetheless desires to terminate the AGREEMENT, the termination shall be deemed to have been effected for the convenience of CMA. In such event, adjustment shall be made as provided in **Article I, Section B, paragraph 1.**

5. Rights and Remedies. The rights and remedies of the parties provided in this Section are cumulative and not exclusive, and are in addition to any and all other rights and remedies provided by law or other sections of this AGREEMENT.

6. Waivers. CONSULTANT, by executing the AGREEMENT, shall be deemed to have waived any and all claims for damages in the event of CMA's termination for convenience as provided in **Article I, Section B, paragraph 1**, except for justifiable costs of termination, including, but not limited to, subcontract termination costs as mutually agreed by CMA and CONSULTANT.

C. REVISIONS IN SCOPE OF SERVICES.

1. Change Order. CMA's representative may make changes in or additions to the Scope of Services under the AGREEMENT if such changes are agreed to by CONSULTANT, which agreement shall not be unreasonably withheld, through a written Change Order which does not modify the overall purpose, term or compensation provisions of the AGREEMENT. No changes in the Scope of Work shall cause an increase in cost to CMA unless the change is approved in advance by a written Change Order.

2. **Extra Work.** At any time during the term of the AGREEMENT, CMA may order extra work to be performed by CONSULTANT. Extra work is defined as work which was not anticipated and/or contained in the AGREEMENT and which is determined by CMA to be necessary for the PROJECT. Necessary changes in the description of the Scope of Services, equitable adjustments in allowable costs, fixed fee, maximum price, term and schedule required by the Extra Work Order shall be agreed upon by the parties and incorporated herein through the execution of a written amendment to this AGREEMENT. CONSULTANT shall not perform any work or incur any costs pursuant to any Extra Work Order without prior approval by CMA. CONSULTANT's compensation shall be adjusted due to an Extra Work Order only if it has an impact on costs or terms of the AGREEMENT.

D. OWNERSHIP OF MATERIALS/CONFIDENTIALITY.

1. **Documents.** Except as noted below, deliverables prepared by CONSULTANT under the AGREEMENT, such as plans, drawings, tracings, quantities, specifications, proposals, sketches, diagrams and calculations, relative to the AGREEMENT shall become the property of CMA upon completion of the term of this AGREEMENT whether or not the PROJECT is completed. CMA shall not be limited in any way in its use thereof at any time during or after the term of this AGREEMENT, provided that any such use not within the purposes of the AGREEMENT shall be at the sole risk of CMA, and provided that CMA shall indemnify CONSULTANT against any damages resulting from such use, including the release of this material to third parties for use not intended in the AGREEMENT, and for deliverables that have been changed without CONSULTANT's written approval. All documents shall be provided in both written and electronic format.

2. **Confidentiality.** All ideas, memoranda, specifications, plans, manufacturing procedures, drawings, descriptions, and all other written information submitted to CONSULTANT by or on behalf of CMA in connection with the performance of the AGREEMENT shall be held confidential by CONSULTANT and shall not, without the prior written consent of CMA, be used for any purposes other than the performance of the services under this AGREEMENT. Nothing furnished to CONSULTANT which is otherwise known to CONSULTANT or becomes generally known to the related industry, shall be deemed confidential. CONSULTANT shall not use CMA's name or insignia, photographs of the work, or any other publicity pertaining to the work in any magazine, trade paper, newspaper, or other news medium without the express written consent of

CMA. CONSULTANT may use project technical information at will in the demonstration of expertise for purposes of describing project experience to others in the routine conduct of CONSULTANT's business with CMA's prior written consent.

E. CONSULTANT STATUS/SUBCONSULTANTS.

1. **Consultant.** In the performance of the services to be provided hereunder, CONSULTANT is an independent consultant and is not an employee, agent or other representative of CMA.

2. **Assignment or Transfer.** Services to be furnished hereunder shall be deemed to be professional services and, except as herein provided, CONSULTANT has neither the right nor the power to assign, sublet, transfer or otherwise substitute its interest in the AGREEMENT or its obligations hereunder without the prior written consent of CMA.

F. INDEMNIFICATION.

1. **Duties.** CONSULTANT represents and maintains that it is skilled in the technical practices necessary to perform the services, its duties and obligations, expressed and implied, contained herein, and CMA expressly relies upon CONSULTANT's representations regarding its skills and knowledge. CONSULTANT shall perform all services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

2. **Responsibilities.** CONSULTANT agrees to defend, protect, indemnify and hold harmless CMA, its officers and employees, from and against any and all liability, claims, suits, loss, damages, costs and expenses (collectively "Claims") to the extent arising out of or resulting from any negligent acts, errors or omissions of CONSULTANT, and its officers, employees, agents or subconsultants in the performance of their services under the AGREEMENT. In the event CMA is found by a court or arbitrator to be partially liable for a Claim, CMA shall reimburse CONSULTANT for its proportionate share of the reasonable costs of defense actually expended, based on its share liability.

CMA shall provide CONSULTANT an opportunity to cure, at CONSULTANT's expense, all errors and omissions, which may be disclosed during the review of the services performed by

CONSULTANT. Should CONSULTANT fail to make such corrections in a timely manner, such corrections shall be made by CMA and CONSULTANT shall pay all costs thereof.

It shall be the responsibility of CONSULTANT to provide the basic insurance requirements indicated in **Section G**, below.

G. INSURANCE.

1. Comprehensive Liability. CONSULTANT shall carry Commercial or Comprehensive General Liability Insurance and maintain aggregate limits of liability sufficient cover not less than \$1,000,000.00 per occurrence for bodily injury and \$500,000.00 per occurrence for Property Damage and Automobile Liability Insurance with limits not less than \$250,000.00 per person and \$500,000.00 per occurrence for property damage. Maintenance of said insurance shall extend throughout the entire term of this AGREEMENT. Such insurance shall add CMA, its officers, employees, agents, and, if applicable other permitting agencies as identified by CMA, while acting within the scope of this AGREEMENT, as additional insureds. Such insurance shall include the following:

- a. All operations including use of all vehicles.
- b. Blanket contractual liability on all written contracts, including this AGREEMENT.
- c. Personal injury (in lieu of, or in addition to, bodily injury).
- d. Use of watercraft, where applicable.

Subconsultants of CONSULTANT shall provide evidence of their own Commercial or Comprehensive General Liability Insurance which meets the above specifications to CMA, or be added to CONSULTANT's policy as additional insured if said policy of CONSULTANT allows such addition.

Notwithstanding the above, in the event a subconsultant, after using its best efforts, is unable to meet the insurance specifications provided in this **Section G, paragraph 1**, CMA, after examining the subconsultant's circumstances, may decide, in its sole discretion, to waive or modify any of the insurance specification requirements for such subconsultant.

2. Errors and Omissions. In addition to the requirements of **Article I, Section G, paragraph 1** above, CONSULTANT shall carry professional liability insurance for errors and omissions in an amount not less than \$1,000,000. Such insurance shall include the following:

- a.** A deductible or self-insured retention is permissible on this policy, providing that such deductible or self-insured retention shall not exceed \$50,000 per occurrence.
- b.** Said policy shall include a contractual liability endorsement on all written contracts, including this AGREEMENT.
- c.** Subconsultants of CONSULTANT providing services of a professional nature, shall provide evidence of their own professional liability insurance which meets the above specifications to CMA, or be added to CONSULTANT's policy as additional insured if said policy of CONSULTANT allows such addition.

Notwithstanding the above, in the event a subconsultant, after using its best efforts is unable to meet the professional liability insurance requirements provided in this **Section G, paragraph 2**, CMA, after examining the subconsultant's circumstances, may decide, in its sole discretion, to modify the professional liability requirements for such subconsultant.

3. Worker's Compensation. CONSULTANT shall carry Worker's Compensation Insurance as required by California Law, covering all work performed by CONSULTANT under the AGREEMENT, and all of CONSULTANT's personnel performing services under the AGREEMENT.

4. Certificates. Insurance certificates evidencing the policies described in this **Article I, Section G** are to be furnished to CMA and provide for not less than sixty (60) days prior written notice to CMA of any cancellation.

H. PROHIBITED INTEREST.

1. Solicitation. CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure the AGREEMENT and that it has not paid or agreed to pay any company or person, other than a bonafide employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or

making the AGREEMENT. For breach of violation of this warranty, CMA shall have the right to rescind the AGREEMENT without liability.

2. Conflict of Interest. CONSULTANT agrees that, for the term of this AGREEMENT, no member, officer or employee of CMA, during his/her tenure or for one (1) year thereafter, or member or delegate to the Congress of the United States, shall have any direct interest in the AGREEMENT or any direct or material benefit arising therefrom.

3. Conflict of Employment. Employment by CONSULTANT of any current officer, executive director or other employee of CMA shall not be permitted even though such employment may be outside of the employee's regular working hours or on weekends, holidays or vacation time. Further, for a period of one year after leaving office or employment, no officer, executive director or other employee of CMA shall, for compensation, act as agent or attorney or otherwise represent CONSULTANT by making any formal or informal appearance by making any oral or written communication before CMA, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding or revocation of a permit, license, grant, entitlement or contract, or the sale or purchase of goods, services or property.

I. AFFIRMATIVE ACTION AND DISADVANTAGED BUSINESS ENTERPRISE PROGRAM.

1. In connection with the execution of the AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. CONSULTANT shall take affirmative action to insure that applicants are employed and that employees are treated during their employment without regard to their race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination.

2. To the extent applicable, CONSULTANT will comply with the CMA's Disadvantaged Business Enterprise (DBE) Program.

J. NOTIFICATION.

All notices hereunder and communications regarding interpretation of the terms of the AGREEMENT or changes thereto shall be effected by the mailing thereof by registered or certified mail, postage prepaid and addressed as follows:

CONSULTANT:

CMA:

ALAMEDA COUNTY CONGESTION
MANAGEMENT AGENCY

ATTN: (name)
(address)
(city), CA (zip)

ATTN: Dennis Fay
Executive Director
1333 Broadway, Suite 220
Oakland, CA 94612-1918

K. AUDIT OF BOOKS AND RECORDS.

CONSULTANT shall make available to CMA, its authorized agents (including but not limited to representatives of the state and federal governments), officers and employees, for examination, any and all ledgers and books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or related to the expenditures and disbursements charged to CMA, and shall furnish to CMA, its agents, and employees, such other evidence or information as CMA may require with respect to any such expense or disbursement charged by CONSULTANT.

The records described in this Section shall be retained by CONSULTANT and made available for inspection by CMA for a period of three (3) years after this AGREEMENT is terminated and final payment made. The audit to determine final compensation will be accomplished by CMA within one year after completion of the PROJECT.

L. ENTIRE AGREEMENT.

This AGREEMENT constitutes the entire agreement between the parties hereto relating to the PROJECT and supersedes any previous agreement or understanding.

ARTICLE II - SCHEDULE

A. SCHEDULE OF WORK.

CONSULTANT shall conform with the schedule set forth in **Appendix C**, "Milestone Schedule," attached hereto and by this reference incorporated herein, except as otherwise modified by the AGREEMENT. In the event it becomes necessary to modify the Schedule of Work, CONSULTANT will prepare a revised schedule for review and approval by CMA. When a revised schedule has been submitted to and approved by CMA, it will be substituted for **Appendix C** and will become a part of this AGREEMENT. CONSULTANT is responsible for reporting in a prompt and timely manner whenever it appears the established work schedule will not be met, whether or not the reasons for anticipated delay are within CONSULTANT's control.

B. REPORTING.

Monthly progress reports in a form acceptable to CMA, which describe work accomplished, shall be submitted with CONSULTANT's monthly billings. CMA agrees to respond to CONSULTANT's draft report submissions in accordance with the Schedule of Work.

C. DELAY.

Neither party hereto shall be considered in the default in the performance of its duties and obligations under this AGREEMENT with respect to the "Milestone Schedule", to the extent that the performance of any obligation is prevented or delayed by an Excusable Delay as defined herein. Should CONSULTANT's services be delayed by any mutually agreed upon excusable cause, CONSULTANT's schedule for completion of tasks affected by such delay shall be extended as agreed to by CMA. CONSULTANT shall take all reasonable actions to minimize any schedule extensions or additional costs to CMA resulting from such delay. Excusable Delays may include, but are not limited to, acts of God or of the public enemy, acts or failures to act of other agencies or CMA (in either their sovereign or contractual capacity), embargoes, and unusually severe weather. In every case, the failure to perform must be reasonably beyond the control and without the fault or negligence of CONSULTANT.

D. NOTICE OF POTENTIAL DELAY.

As a condition precedent to the approval of an extension of time to complete the established work schedule, CONSULTANT shall give written notice to CMA within seven (7) working days after CONSULTANT knows or should know of any cause or condition which might,

under reasonably foreseeable circumstances, result in delay for which CONSULTANT may claim an extension of time.

ARTICLE III – COMPENSATION/PAYMENT

A. INVOICES AND TIME OF PAYMENT.

1. For all services described in **Article I** and **Appendix A**, payment is due within thirty (30) days after receipt of billing of the amount due for all services rendered during the month, except as otherwise provided in this **Section A**. Payment for service will represent the value of the completed scope of work as measured by expended costs to date.

2. CMA shall withhold ten percent (10%) of each progress payment referred to in **paragraph 1** above.

3. If CMA disputes any portion of the amount due to CONSULTANT, it may, at its sole discretion, withhold payment up to 150% of the disputed amount pending resolution of the dispute. If any amount is wrongfully withheld or not paid to CONSULTANT on a timely basis, CMA shall pay to CONSULTANT 1.5% per month for the improperly withheld amount for each month which payment is wrongfully withheld or not paid. In any action for the collection of amount withheld in violation of this provision, the prevailing party shall be entitled to reasonable attorney's fees and costs.

4. CONSULTANT agrees that within twenty (20) days of receipt of payment from CMA, CONSULTANT shall pay to its subconsultants all amounts due from such payment, subject to such legal requirements under federal or state law regarding withholding of disputed payments and applicable penalties.

5. The format of payment invoices shall be as mutually agreed upon by CONSULTANT and CMA.

6. CMA may, on occasion, request reasonable documentation for certain expense items. In such instances, payment for all other amounts in the invoice for which additional documentation is not required will be made.

7. Upon CMA's Final Acceptance pursuant to **Article I, Section A, paragraph 20**, CONSULTANT shall submit a final invoice to CMA and request final retention payment. CMA shall make final retention payment to CONSULTANT within 45 days of receipt of billing of the

amount due. Final Payment shall be subject to the provisions of **paragraphs 1 and 3** above with regard to CMA's right to withhold disputed payments, CONSULTANT's rights to 1.5% payment on wrongfully withheld or untimely payment, any prevailing party's reasonable legal fees and costs and payments to subconsultants.

8. CONSULTANT agrees that the cost principles set forth in Title 48 CFR, Chapter 1, Part 31 (Cost Principles and Procedures) shall be used to determine the allowability of individual cost items. Any costs for which payments have been made to CONSULTANT which are determined by subsequent audit to be unallowable under these cost principles are subject to repayment by CONSULTANT to CMA.

9. CONSULTANT agrees to comply with federal procedures in accordance with Title 49 CFR, Part 18 (Uniform Administrative Requirements for Grants and Agreements with States and Local Governments).

10. If any subconsultant provides services pursuant to this AGREEMENT, the agreement with said subconsultant shall contain a clause to the effect that the provisions of **paragraphs 8 and 9** above shall apply to said subconsultant.

B. SUSPENSION OF WORK.

In the event payment for services rendered has not been made within forty-five (45) days from the receipt of the invoice for any uncontested billing, CONSULTANT may, after giving fifteen (15) days written notice and without penalty or liability of any nature, suspend all work on all authorized services specified herein. Upon receipt of payment in full for services rendered, CONSULTANT will continue with all authorized services. Payment of all compensation due CONSULTANT pursuant to this AGREEMENT shall be a condition precedent to CMA's use of any of CONSULTANT's professional service work products furnished under this AGREEMENT.

ARTICLE IV - OBLIGATIONS OF CONSULTANT

A. AUTHORIZATION TO PROCEED.

CONSULTANT will not begin work on any of the services described in **Article I** until CMA directs it in writing to proceed.

ARTICLE V – OBLIGATIONS OF CMA

A. CMA-FURNISHED DATA.

CMA will provide to CONSULTANT all relevant technical data in CMA's possession, including, but not limited to, previous reports, /maps, surveys, borings,/ and all other information relating to CONSULTANT's services on the PROJECT. CONSULTANT will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by CMA.

B. ACCESS TO FACILITIES.

CMA will make its facilities reasonably accessible to CONSULTANT as required for CONSULTANT's performance of its service.

C. TIMELY REVIEW.

CMA will examine the studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, and other consultants as CMA deems appropriate; and render, in writing, decisions required of CMA in a timely manner.

D. PROMPT NOTICE.

CMA will give prompt written notice to CONSULTANT whenever CMA observes or becomes aware of any development that affects the scope or timing of CONSULTANT's services, or any defect in the work of CONSULTANT or its subconsultants.

ARTICLE VI - APPENDICES, SCHEDULES AND SIGNATURES

This AGREEMENT, including its Appendices, constitutes the entire agreement, supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties.

The following Appendices are hereby made a part of this AGREEMENT:

Appendix A: DETAILED SCOPE OF WORK

Appendix B: CONSULTANT AND SUBCONSULTANT FIRMS KEY PROJECT
PERSONNEL

Appendix C: MILESTONE SCHEDULE

Appendix D: PROJECT COST PROPOSAL

IN WITNESS WHEREOF, CMA has by order caused the AGREEMENT to be subscribed by the binding authority of CMA and CONSULTANT has caused the AGREEMENT to be subscribed on its behalf by duly authorized signees.

CONSULTANT:

By: _____
Name: _____
Its: _____

Date: _____

CMA:

ALAMEDA COUNTY CONGESTION
MANAGEMENT AGENCY

By: _____
Dennis Fay, Executive Director

Date: _____

Recommended For Approval

By: _____
Name / Title

Approved as to form and legality:

Wendel, Rosen, Black & Dean LLP
Legal Counsel to CMA

APPENDIX A
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

DETAILED SCOPE OF WORK

APPENDIX B
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

CONSULTANT AND SUBCONSULTANT
FIRMS KEY PROJECT PERSONNEL

APPENDIX C
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

MILESTONE SCHEDULE

APPENDIX D
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

PROJECT COST PROPOSAL